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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

प्राधिकार से प्रकाशित

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सं. 24]	नई दिल्ली, बृहस्पतिवार, सितम्बर 30, 2010/आश्विन 8, 1932
No. 24]	NEW DELHI, THURSDAY, SEPTEMBER 30, 2010/ASVINA 8, 1932

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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 11 अगस्त, 2010

आ.अ. 40(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(क) के अनुसरण में, भारत निर्वाचन आयोग, 2009 की निर्वाचन याचिका संख्या 5 में केरल उच्चतम न्यायालय के दिनांक 17 मई, 2010 का निर्णय एतद्वारा प्रकाशित करता है।

[आदेश अंग्रेजी अधिसूचना में देखें]

[सं. 82/लक्षद्वीप-लोक सभा/(5/2009)/2010]

आदेश से,

आर. के. श्रीवास्तव, सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 11th August, 2010

O.N. 40(E).—In pursuance of Section 106(a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala dated 17th May, 2010 in Election Petition No. 5 of 2009.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. RAMKUMAR

MONDAY, THE 17TH MAY, 2010/27TH VAISAKHA, 1932

El. Pet. No. 5 of 2009

## PETITIONER :

DR. P. POOKUNHI KOYA, AGED 60 YEARS,  
S/O CHERIYA KOYA HAJI, PALLICHAPURA HOUSE,  
AMINI, UNION TERRITORY OF LAKSHADWEEP.

By ADVs. Sri M.K. Damodaran, Senior Advocate,  
Sri C.S. Abdul Sammad, Sri. Alan Papali  
Sri P. K. Vijayamohanan, Sri. Sojan Micheal  
Sri Gilbert George Correya and Dhanya P. Ashokan  
Sri Nishil P.S.

## RESPONDENT(S) :

1. Muhammed Hamdullah Sayeed, Member of Parliament, S/o. Late P. Mohammed Sayeed, Aliyathamada Beethathabiyyapura, Androth, Union Territory of Lakshadweep,
2. Lukmanul Hakkem, S/o Sayeed Mohamed, Melekunnadom, Kavarathi, Union Territory of Lakshadweep,
3. Dr. K. P. Muthu Koya, S/o Aboobacker Kunji, Kattampally, Kavarathi, Union Territory of Lakshadweep.

ADVs. Sri P. Chandrasekhar and Sri. P.M. Mohammed Shiraz for R1 Sri. P.S. Sreedharan Pillai and Smt. C.G. Preetha for R3

This Election Petition Having been Finally Heard on 6-1-2010, the Court on 17-5-2010 Delivered the following :

V. RAMKUMAR, J.

Election Petition No. 5 of 2009

Dated : 17th day of May, 2010

## JUDGMENT

In this petition filed under Secs. 80, 100, 101, 123 and 127A of the Representation of the People Act, 1951 (hereinafter referred to as “the R.P. Act” for short), the petitioner (Dr. Pookkunhi Koya) challenges the election of the 1st respondent herein (Muhammed Hamdullah Sayeed) from the U 06 Lakshadweep Parliamentary Constituency (reserved for Scheduled Tribe) in the Parliamentary election held on 16-4-2009 and the result of which was declared on 16-5-2009. The petitioner was a candidate and nominee of the political party called National Congress Party. The first respondent returned candidate contested the election as a candidate of the Indian National Congress. The other two contestants were respondents 2 and 3 (Lukmanul Hakeem and Dr. K. P. Muthu Koya). The 2nd respondent was the candidate and nominee of the Communist Party of India (Marxist Party) [“the C.P.I.(M)” for short] and the 3rd respondent was the nominee of the Bharathiya Janatha Party [“the B.J.P.” for short].

2. The dates which are relevant for the purpose of this election petition are the following :—

- |   |            |
|---|------------|
| 1. Date of Election Notification                        | 23-3-2009  |
| 2. Last date for filing nomination                      | 30-3-2009  |
| 3. Date of scrutiny                                     | 31-3-2009  |
| 4. Last Date for withdrawal of Nomination               | 02-4-2009  |
| 5. Date of publication of final list of candidates      | 02-4-2009  |
| 6. Date of election                                     | 16-4-2009  |
| 7. Number of candidates contested                       | 4          |
| 8. Date of declaration of election results              | 16-5-2009  |
| 9. Last date for filing E.P. U/s. 81(1) of the R.P. Act | 30-6-2009  |
| 10. E.P. filed on                                       | 30-6-2009  |
| 11. Summons issued to the respondents on                | 17-7-2009  |
| 12. R1 entered appearance on                            | 07/09/2009 |

3. The number of votes secured by the petitioner and respondents 1 to 3 are as follows :—

Sl. No.	Candidate's Name	Candidate's Rank in the E.P.	Votes Secured
1.	Dr. P. Pookunhikoya	Petitioner	18294
2.	Muhammed Hamdullah Sayed	1st respondent	20492
3.	Lukmanual Hakeem	2nd respondent	467
4.	Dr. K.P. Muthu Koya	3rd respondent	245

4. According to the petitioner the election of the first respondent is vitiated by the following grounds :—

- (1) On the date of election the first respondent was not qualified to be chosen to fill the seat thereby attracting Section 100 (1) (a) of the R.P. Act.
- (2) The first respondent has won the election on account of the following “corrupt practices” committed by him, his election agent and other persons with the consent of the first respondent and falling under Sec. 100 (1) (b) of the R.P. Act :—
  - (a) By offering gratification to the electors amounting to “bribery” under Section 123 (1) A.
  - (b) By directly or indirectly interfering with the free exercise of their electoral right by the voters amounting to “undue influence” under Section 123 (2).
  - (c) By appealing to the voters on the ground of religion and using religious symbols falling under Section 123 (3).
  - (d) By publishing false statements in relation to the personal character and conduct of the petitioner concerning his candidature and calculated to prejudice the prospects of the petitioner in the election falling under Sec. 123 (4).
  - (e) By procuring the services of Government servants for the furtherance of the election prospects of the first respondent falling under Sec. 123 (7).

(3) Non-compliance of the provisions of the Constitution of India R.P. Act and rules and orders issued under the R.P. Act constituting a ground under Sec. 100 (1) (b) (iv).

5. Adv. M/s. P. Chandrasekhar and P.M. Mohammed Shiraz the learned counsel appearing for the first respondent argued that the election petition was liable to be dismissed for want of specific pleading in terms of the legal provisions relied on by the petitioner and that election petition does not make out a complete cause of action so as to maintain the election petition. Sr. Advocate Sri. M.K. Damodaran appearing for the petitioner, on the other hand, submitted that the election petition has pleaded the “material facts” as well as the “full particulars” with regard to each and every allegation and that the arguments advanced on behalf of the first respondent are unsustainable.

6. The point for consideration is as to whether the Election Petition is liable to be rejected/dismissed as not maintainable at the threshold for want of necessary pleadings and a complete cause of action :

7. **The point :—**After hearing both sides and after carefully perusing the averments in the Election Petition and after considering the case law on the point I am inclined to accept the contentions urged on behalf of the first respondent.

8. The legal principles given below are now well settled and they do not admit of any doubt or controversy :—

- A. An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the court possesses no common law power. (*Jagan Nath v. Jaswanth Singh and Others—Air 1954 SC 2010 ; Ch. Subbarao v. Member, Election Tribunal—AIR 1964 SC 1027*).
- B. Success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. [*Vide Jagan Nath's case (supra)*].
- C. The purity of the election process has to be safeguarded. The setting aside of an election involves serious consequences not only for the returned candidate and the constituency but also for the public at large in as much as a re-election involves enormous load on the public funds and the administration. (*Shivajirao B. Patil Kawekar v. Vilasrao D. Deshmukh—2000 (1) SCC 398*).

- D. The trial of an election petition where “corrupt practice” is alleged is of a quasi criminal nature. A heavy burden rests on the person alleging the corrupt practice to prove strictly all the ingredients of the charge. This is because the charge that a person has committed a corrupt practice has the serious consequence of disqualifying him from being chosen as or from being a member of any House of the Parliament or of the Legislative Assembly or Council of a State for a period up to 6 years. (See *Manohar Joshy v. Damodar Tatyaba*—(1991) 2 SCC 342, 351; *Nand Singh v. Ajit Inder Singh*—JT (2000) 10 SC 531; *Anang Uday Singh Deo v. Rangnath Mishra and Others* JT (2001) 8 SC 574.; *Jeet Mohinder Singh v. Paraminder Singh Jassi*—(1999) 9 SCC 386.
- E. The provisions of Sec. 87 of the R.P. Act specifically enjoin that every Election Petition shall be tried by the High court as nearly as may be in accordance with the procedure applicable under the C.P.C. for the trial of suits. Merely because Section 83 does not find a place in Sec. 86 (1) which enables the High Court to dismiss an Election Petition for non-compliance with the provisions of Section 81, 82 or 117 it does not mean that the powers under the C.P.C. cannot be exercised to dismiss or reject the Election Petition. Under the C.P.C. the Court has the power to act at the threshold and the said power must be exercised in appropriate cases. In regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy should be set at rest at the earliest, if the facts of the case and the law so warrant. In a case where the election petition is lacking in any essential “material fact”, the petition can be dismissed summarily. (Vide *Azhar Hussain v. Rajiv Gandhi*-AIR 1986 SC 1253). If the election petition does not disclose a cause of action, even though non-compliance of Section 83 of the R.P. Act is not a ground mentioned in Section 86, the High Court can fall back upon the provisions of the C.P.C. and reject the petition under Order VII Rule 11 C.P.C. (See *Lalit Kishore Chaturvedi v. Jagdish Prasad Thada* -1990 (Supp) SCC 248; *Virender Nath Gautam v. Satpal Singh* (2007) 3 SCC 617. The Court can under Order VI Rule 15 C.P.C. strike out the pleadings in an election petition which does not disclose any cause of action. If after striking out the pleadings no triable issue remains to be considered, the Court can reject the petition under Order VII Rule 11 C.P.C. [*Dhartipukar Madan Lal Agarwal v. Shri Rajiv Gandhi*-AIR 1987 SC 1577; *Surinder Singh v. Mardial Singh*-1985 (1) SCC 91].
- F. The distinction between “material facts” and “full particulars” should not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the party in support of the case set up by him either to prove his cause of action or his defence. “Particulars” on the other hand are details in support of “material facts” pleaded by the party. They amplify, refine and embellish “material facts” by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative (See *Mahadeorao Sukaji v. Ramaratan Bapsu* (2004) 7 SCC 181. All facts which are essential to clothe the petitioner with a complete cause of action are material facts [See paragraph 15 of *V.S. Achuthanandan v. Francis* (1999) 3 SCC 737]. Material facts and particulars together constitute the facts to be proved or “facta probanda”. It is different from the evidence by which those facts are to be proved viz. “Facta probantia” [Para 38 of *Chinna Swamy v. Palani Swamy* (2004) 6 SCC 341]. *Virender Nath Gautam v. Satpal Singh and Others* (2007) 3 SCC 617. While failure to plead material facts is fatal to the Election Petition and no amendment of the pleadings can be allowed to introduce such “material facts” after the expiry of the time limit prescribed for filing the Election Petition. The absence of “full particulars” can be cured at a later stage by introducing the same through appropriate amendment [*L.R. Shivaramagowda v. T.M.Chandrasekhar* (1999) 1 SCC 666; *A. Sapna v. Singora* (1991) 3 SCC 375; *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* (1995) 5 SCC 347].
- G. Concise and specific pleadings setting out all relevant material facts is indispensable in an election petition since, the election petition if allowed, nullifies the success of a candidate and is, therefore, a serious remedy. An election petition must therefore precisely allege all material facts on which the petitioner relies on in support of a plea that the result of the election has been materially affected on account of the conduct of the opposite party. [Para 15 of *Santhosh Yadav v. Narender Singh* (2002) 1 SCC 160] Concise statement of material facts means the entire bundle of facts which would constitute a complete cause of action. [Para 77 of *Har Kirat Singh v. Amarinder Singh* (2005) 13 SCC 551].
- H. Pleadings which are vague are liable to be struck off under Order VI Rule 16 C.P.C. R.P. Act is a complete and self-contained Code. The election petitioner should not be permitted to have a fishing expedition or a roving enquiry without the requisite pleadings. [*Madhava Kurup v. Muraleedharan* 1990 (2) KLT 112; *Azhar Hussain v. Rajiv Gandhi*-AIR 1986 SC 1253].

- I. Order VIII Rule 5 C.P.C. is not applicable to an election petition (Dr. Jagjit Singh v. G.K. Singh—AIR 1966 SC 773). But Order VIII Rules 1, 8 and 9 as judicially interpreted are applicable to election trials (Kailash v. Nanhku—(2005) 4 SCC 480).
- J. Where the Court finds that neither the material facts nor the full particulars are stated in the election petition, the petition can be dismissed for not disclosing the cause of action. (Para 21 of Subash Desai v. Sarad Rao—AIR 1994 SC 2277). An election petition can be dismissed summarily if it does not disclose any cause of action—Abraham Kriakose v. P.T. Thomas—1991 (2) KLT 650]. Election Petition alleging corrupt practice is liable to be dismissed if there is omission to state material facts or give full particulars. (Subash Desai v. Sharad J. Rao—AIR 1994 SC 2277).
- K. Omission of a single material fact leads to incomplete cause of action and the statement of claims becomes bad. (Vide S.N. Balakrishna v. George Fernandez—AIR 1969 SC 1201). Failure to plead a single material fact is fatal (Azhar Hussain v. Rajiv Gandhi—AIR 1986 SC 1253).
- L. To enable the Court to reject an election petition for non-disclosure of cause of action, the election petition alone should be looked into and it is the duty of the Court to do so without a written statement by the opposite party. (Para 24 of Hari Shankar Jain v. Sonia Gandhi—(2001) 8 SCC 233).
- M. In stating the “material facts” merely quoting the words of the Section is not sufficient. The facts which constitutes the corrupt practice must be stated and the facts must be co-related to one of the heads of corrupt practice. [S.N. Balakrishna’s case (*supra*)].
- N. Section 100 of the R.P. Act enumerates the grounds for declaring an election to be void by the High Court “Corrupt practice” which is elaborately defined under Section 123 of the R.P. Act is a ground under Section 100 of the R.P. Act. Clause (1)(b) of Section 100 constitutes the ground for declaring an election to be void on the ground of “corrupt practice” if such corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.
- O. The entirety of averments that the publication was made by the returned candidate or his election agent or by any other person with the consent of the candidate or his election agent of any statement of fact which is false, which he either believes to be false or does not believe to be true in relation to the personal character or conduct of the candidate, would constitute “material facts” [Ravinder Singh v. Jarneja Singh—AIR 2000 SC 3026]. Mere proof of corrupt practice by an agent other than the returned candidate’s election agent is not sufficient. It should further be shown that such corrupt practice has materially affected the result of the election insofar as it concern the returned candidate. [Section 100(1)(d)]. Where the above aspect is not pleaded the election petitioner cannot be permitted to adduce evidence to that effect. [Shivaramagowda’s case (*supra*)].
- P. A “statement of fact” for the purpose of Section 123(4) can only be a past event capable of being proved to be false and cannot be a hypothetical future apprehension or the conjecture of a likelihood in future (Gadak’s case—AIR 1994 SC 678).
- Q. If a false statement is made in regard to a public or political character of the candidate, it would not constitute corrupt practice under Section 123(4) of the R. P. Act. [Lalit Kishore Chaturvedi v. Jadish Prasad—(1990) Supp. SCC 248; K. Yaswant Rao v. Vikhe Patil—AIR 1994 SC 678].
- R. Consent is the life line to link up the candidate with the action of the other person. Without such consent it may not amount to corrupt practice. Hence, such consent should be specifically pleaded and proved. [Para 20 of Azhar Hussain’s case (*supra*)].
- S. It is the candidate’s belief which matters under Section 123(4) of the R.P. Act [Paras 42 and 43 of S. N. Balakrishna’s case (*supra*)].
- T. Failure to prove that the impugned statement of fact is not only false but also that the respondent returned candidate and his agents publishing the impugned statements either believed the statement to be false or did not believe them to be true, is false and the impugned statement will not fall within the mischief of Section 123(4) of the R.P. Act (Mangilal v. Krishnaji Rao—AIR 1971 SC 1943). Thus the belief of the candidate that the statement is false or is not true is a “material fact” which has to be pleaded and proved and omission to plead the material fact is fatal to the election petition. (See Sheonath Singh v. Ram Pratap—AIR 1965 SC 677, paragraph 17 of Kumara Nand v. Brijmohan Lal Sharma—AIR 1967 SC 808, paragraphs 20 and 21 of Raghunath Singh v. Krishna Sharma—AIR 1971 SC 1839, paragraph 19 of Dr. Jagjit Singh v. Giani Kartar Singh and Other—AIR 1966 SC 773 and paragraph 7 of Ravinder Singh v. Janmeja Singh and Others—AIR 2000 SC 3026).
- U. For non-disclosure of cause of action the Court has the power to reject the petition at any stage and starting of trial or settlement of issues is not bar to the exercise of the above power. (K.K. Somanathan v. K.K. Ramachandran Master—AIR 1988 Kerala 259).

- V. For a person to be considered as an agent of a particular candidate, such person should have been employed by the candidate, in connection with the election. Employment is essential for his being treated as an agent. The mere fact that some persons assist a candidate or that they support him does not by itself make them his agents. [Gervasis v. Augustine—1971 KLT (SN)] 51 and [Suresh Babu v. Baby John—1983 KLT (SN) 6].
- W. The word “appeal” to constitute a corrupt practice under Section 123(3) and (3A) should be an appeal to the religion of the returned candidate. The necessary ingredient is the presence of religious hatred dividing two or more religious communities using the religion of the returned candidate. [Para 12 of Zaiudheen Bukhari v. Brij Mohan Ramdas—(1976) 2SCC 17].
- X. Mere appeal to religion is no corrupt practice. It becomes a corrupt practice only if there is appeal on the ground of the religion of the candidate. (Paras 11, 13 and 16 of Dr. Yashwant Prabhu v. P. K. Kunte—AIR 1986 SC 1113).
- Y. An appeal on the ground of religion must be by the candidate or his election agent. If it is by any other person consent must be specifically alleged with full details. A bald and omnibus statement of consent of the candidate or his election agent will not serve the purpose of law. On a bald statement regarding consent the petitioner cannot be allowed to shape his plea and let in evidence at the time of trial. [Paras 14 to 16 of Balan v. Manoharan Master—1988 (1) KLT 717].
- Z. Necessary averment of facts constituting an appeal on the ground of “his religion” to vote or to refrain from voting is a material fact—(Para 14 of H.S. Pradhan v. R.S. Talwandi—AIR 2005 SC 2371).
- AA. Act done prior to nomination cannot fall under “corrupt practice”. In a case alleging “corrupt practice” the petitioner cannot succeed by throwing suspicion here and there. [Thamarakshan v. Ramesh Chennithala—1988 (2) KLT (SN) 3].
- AB. Electoral role is conclusive evidence of the fact that the candidate is an ordinary resident of the constituency. Entry in the electoral role is beyond challenge in a election petition unless there is an allegation of disqualification under Section 16 of the Representation of the People Act, 1950. (Paras 9 to 15 of Babu Rao v. Manick Rao—AIR 1999 SC 2028).
- AC. In order to become a Scheduled Caste candidate of the relevant district it is not necessary that he should have been born in that District. [Beny Prasad v. Narbada Prasad—(1997) 9 SCC 631].
- AD. Allegation of corrupt practice relating to the period anterior to the date of nomination of the candidate would not constitute allegation of corrupt practice and, therefore, must be excluded from consideration. [Mohan Rawale v. Damodar Tatyaba—(1994) 2 SCC 392].

9. Bearing in mind the above legal principles judicially settled, I now proceed to consider whether there are sufficient pleadings in the election petition to make out all or any of the grounds put forward by the petitioner. The relevant pleadings made in the Election Petition in support of the grounds are considered in the following tabular statement :—

Sl. No.	Material facts as stated in the Election Petition	Paragraph No. in the Election Petition	Reasons as to why no cause of action is made out
(1)	(2)	(3)	(4)
1.	Officials of Lakshadweep administration exerted undue influence, canvassed votes in favour of 1st Respondent with the active involvement and connivance of the 1st Respondent, his agents and workers to see that the 1st Respondent became the candidate of the Indian National Congress to the election to the Lok Sabha from U06 Lakshadweep Parliamentary Constituency to be held on 16-4-2009 and also got elected.	Para 4	These averments do not constitute material facts. These averments do not fall under any of the grounds in Section 100 of the R.P. Act.
2.	The 1st Respondent was never born and brought up in the Union Territory of Lakshadweep. The Society and residents of Lakshadweep never accepted the 1st Respondent as a member of Lakshadweep Scheduled Tribe.	Para 4	For a candidate to become a member of Lakshadweep Scheduled Tribe, it is not necessary that he should be born in Lakshadweep. It is also not necessary for a candidate to be accepted by the society and residents of the Lakshadweep as a member of Lakshadweep Scheduled Tribe. These averments therefore do not constitute material facts or a cause of action for the election petition.

- |   |   |        |   |
|---|---|--------|---|
| 3 | There was a concerted effort on the part of the officials with the connivance of the 1st respondent, his agents and workers to make the 1st respondent a Schedule Tribe so as to become eligible to contest the election from the Lakshadweep Constituency reserved for Scheduled Tribe.  | Para 4 | These averments do not constitute material facts as they do not relate to any of the grounds in Section 100 of the R.P. Act. These averments also do not give rise to any cause of action as the averments are vague and incomplete (See Para 18 of AIR 1986 SC 1253).  |
| 4 | The corrupt practices originated from conspiracy hatched out between the 1st respondent and certain officials of the Lakshadweep Administration to manipulate the voters list and facilitate the 1st respondent (who otherwise was not qualified to contest the election) to contest the election, and to secure success in the election.   | Para 5 | These averments do not constitute material facts and do not give rise to any cause of action. These averments do not fall under any of the grounds in Section 100 of the R.P. Act.  |
| 5 | The 1st respondent was never born and brought up in the Lakshadweep island as a member of the local Scheduled Tribe. Going by the provisions of the Constitution (Scheduled Tribes) (Union Territories) Order, 1951, only the children who are born to the inhabitants of Lakshadweep in the territory of Lakshadweep alone were entitled to have the status of Scheduled Tribe. It was by an amendment to the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 by the Amendment Act, 2008 published in the Lakshadweep Gazette dated 31-1-2009 by way of proviso to the order it was laid down that the children who are born to inhabitants of Lakshadweep in any other place in the Mainland of India shall be deemed to be inhabitants born in the island if such children settle permanently in the islands. The 1st respondent was born at Mysore and was brought up at Mumbai and Delhi and never settled in the territories of the island. However, it was by abuse of the process and authority, the 1st respondent was issued with a Scheduled Tribe Certificate certifying to be a member of the Scheduled Tribe and he was allowed to submit nomination. | Para 5 | These averments do not constitute material facts and do not give rise to any cause of action. As per the Constitution (Scheduled Tribes) (Union Territories) Order, 1951 relating to Lakshadweep, children born to inhabitants of Lakshadweep are members of Scheduled Tribe of Lakshadweep. As per Sec. 2 of the Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Act, 2008, the Constitution (Scheduled Tribes) (Union Territories) Order 1951, was amended by incorporating a proviso and an Explanation to the Schedule of the 1951 Order by providing that children who are born to inhabitants of Lakshadweep in any other place in the mainland of India shall be deemed to be inhabitants born in the island if such children settle permanently in the islands. As per the Explanation inserted it was provided that the term "settle permanently" will have the same meaning as defined under Clause 3 (1) (d) of the Lakshadweep Panchayaths Regulation, 1994. Clause 3 (1) (d) of the aforesaid Panchayaths Regulation explains by a deeming provision the expression "ordinarily resident" to mean a person who has been ordinarily residing in such island or is in possession of a dwelling house therein ready for occupation. There is no averment in the petition that the 1st respondent is not in possession of any dwelling house in Lakshadweep ready for occupation or that he is not born to inhabitants of Lakshadweep. Although they are Muslims, professing Islam, the people of Lakshadweep belong to the Schedule Tribe. In Para 6 of the E.P. it is admitted that R1 is the son of late P.M. sayeed who had been representing Lakshadweep in the Parliament and was a Minister in the Centre. A child in India is presumed to have his father's religion and corresponding civil and social status. (See para 23 of Commissioner of Wealth Tax v. Sridharan—(1976) 4 SCC 489; Sobha Hymavathi Devi v. Setti Gangadhara Swami – AIR 2005 SC |

6 It was by abuse of process of the authority that the 1st respondent was favoured with a Scheduled Tribe Certificate certifying him to be a member of the Schedule Tribe and he was allowed to submit nomination.

**Para 5**

800). For that reason also the caste certificate of the 1st respondent is beyond challenge.

These averments are totally vague and do not constitute a cause of action. These averments do not fall under any of the grounds in Section 100 of the R.P. Act.

7 It is out of conspiracy by the 1st respondent with the officials of the Lakshadweep Administration with the active connivance of the Union Government, the amendment order was issued enabling the 1st respondent to obtain a Schedule Tribe Caste Certificate. The participants in the conspiracy to enable the 1st respondent to obtain the Caste Certificate and facilitate his contest in the election were Sri. T. Kasim and Sri. I.C. Pookoya, Sub-Divisional Officers and the Settlement Officer Sri Lal Singh. Sri Lal Singh was the Returning Officer and Sri T. Kasim and I.C. Pookoya were the Assistant Election Registration Officers for Kavarati and Androth respectively. The agents of the 1st respondent who have organized the election of the 1st respondent as a programme of the Union Government and the administration by involving the Government Officials in all the stages of the election programme were Sri U. Cheriyaakoya Thangal, Chairman of the Vakaf Board, who was formerly the Chief Executive Councilor of the District Panchayat and Shri Ahmed Haji, Vice President of Lakshadweep Congress Committee and Chairman of Village Dweep Panchayat Kavaratti.

**Para 6**

The averments do not constitute any cause of action. These are not material facts relating to any of the grounds in Section 100 of the R. P. Act. The Constitution (Scheduled Tribes) (Union Territories) Order (Amendment) Act, 2008 is an Act of Parliament after receiving the assent of the President. The said Act is an amendment to the Presidential Order of 1951. It is a piece of legislation. Mala fides or extraneous motive cannot be attributed to the legislature. Even transferred malice is unknown in the field of legislation. [K. Nagaraj v. State of A. P. - AIR 1985 SC 551; Para 12 of G.C. Kanungo v. State of Orissa AIR 1995 SC 1655 and Para 40 of State of Kerala and Another v. People's Union for Civil Liberties Kerala State Union and Others—(2009) 8 SCC 46].

8 The 1st respondent is son of Late P.M. Sayeed, who had been representing the Lakshadweep in the Parliament and was a Minister in the Centre. It was to facilitate the 1st respondent to succeed his father a conspiracy was held at the instance of the 1st respondent and official of the Union of India at Ministry of Law and Justice to amend the Constitution Order in respect of Lakshadweep conferring Schedule Tribe Status to the children who are born in mainland of India as well. By a Presidential order no fresh caste

**Para 6**

The averments do not constitute any cause of action nor do they constitute material facts. They are not related to any specific ground under Section 100 of the R. P. Act. Merely because the first respondent could take advantage of the 2008 Amendment to the Presidential Order, it cannot be said that the said amendment was brought forth in pursuance of a conspiracy involving the officials of the Union of India and the Ministry of Law and Justice. As already stated, by virtue of the Explanation added to the 2008 Amendment of the Presidential Order of 1951, the expression "settle permanently" will have to be understood as "ordinarily resident" as explained by clause 3(1)(d) of the Lakshadweep Panchayaths Regulation, 1994.



status can be conferred on a citizen. Otherwise, the 1st respondent could not have got the eligibility to contest in the election. In the caste certificate issued to the 1st respondent also, it is not mentioned he is permanently settled in the Island but only recites that his family ordinarily resides in Lakshadweep.

A person can be said to be ordinarily residing in the Island if he is in possession of a dwelling house therein ready for occupation. The petitioner has no case that the first respondent has no dwelling house ready for occupation in the Island.

9 The 1st respondent submitted on application for caste certificate which was processed against the directions in the Order issued by the Administrator to be followed in issuing Scheduled Caste Certificate. The issuance of the Certificate was in a public function held at Androth. In fact, this was an official function by the Administration organised to announce the entrance of the 1st respondent to the Parliamentary election. The abuse of the official machinery started with the manipulation of the electoral rolls by including even minors and beyond the time limit stipulated for finalisation of the electoral rolls.

**Para 7**

These averments do not constitute material facts or cause of action. They do not fall under any of the grounds under Section 100 of the R. P. Act.

10 In fulfilment of the conspiracy an Act was brought into force to amend the Schedule Tribes Union Territories-Order, 1951 by Amendment Act, 2008 which received assent of President on 7-1-2009. It was published in Official Gazette of Lakshadweep dated 31-1-2009.

**Para 8**

These averments do not constitute any material facts and do not fall under any of the grounds under Section 100 of R.P. Act so as to constitute a cause of action.

11 As the Amendment Act, 2008 which received assent of the President on 7-1-2009 will have only prospective effect and the 1st respondent having born on 11-4-1982 will not get benefit of the amendment. The acceptance of his nomination is therefore illegal.

**Para 9**

The Presidential assent was given on 7-1-2009. The Amendment Act came into force on 9-1-2009, long before the date of election notification. The first respondent submitted his nomination on 27-3-2009. Hence, there is no question of retrospective operation of the Amendment Act. An Act is not retrospective merely because certain incidents are drawn from a date antecedent to the coming into force of the Act.

(*Vide Sree Bank Limited vs. Sarkar Dutt Roy-AIR 1966 SC 1953 and D. S. Nakkara vs. Union of India-AIR 1983 SC 130*). As per the Amending Act of 2008 the first respondent was qualified to submit his nomination and entitled to contest the election as a Scheduled Tribe candidate.

12 As the Amendment Act to the Constitution children who are born to inhabitants of the Lakshadweep in any other place in the main land of India shall be deemed to be inhabitants born

**Para 10**

There is no question of retrospective operation of the Amendment Act. The fact that certain pre-requisites for application for the Act were drawn from a time antecedent to the passing of the Act will not make the Act retrospective in operation (*AIR 1966 SC 1953 & AIR 1983 SC 130*).

in the island if such children settled permanently in the island. The children born after coming into effect of Annexure I notification will only get the benefit and the 1st respondent was not qualified to be included as Scheduled Tribe of Union Territory of Lakshadweep.

13 The first respondent filed an application dated 27-1-2009 with a certificate of Birth of the 1st respondent issued by Government of Karnataka stating that the 1st Respondent was born in Sankalpa Hospital, Mysore on 11-4-1982 wherein the permanent address of the father and mother was shown as No. 53, Hudco, Bannimantap, Mysore.

14 No documents were produced to show that the 1st Respondents' parents were inhabitants of the Lakshadweep and that the 1st respondent has permanently settled in the Lakshadweep Islands and without conducting any verification or enquiry, I.C. Pookoya, Sub-Divisional Officer, Androth who was appointed as the Assistant Electoral Officer, issued the Caste Certificate on 3-2-2009 on the same day when Annexure-II order was passed by Administrator of the Union Territory of Lakshadweep. This was done without conducting any enquiry and without verifying records.

15 Amending Act was brought into force with oblique purpose for conferring Schedule Tribe Status on 1st respondent.

16 Annexure IV Caste certificate was issued to 1st Respondent in a function organized by Lakshadweep Employees Parishad Congress which is an organization associated with the Indian National Congress where 1st respondent is the legal adviser.

17 1st respondent, his agents and with their consent the followers and workers of the 1st Respondent have made effigy of the petitioner depicting the petitioner as a drunkard and kaffir in the eyes of the voters and exhibited at different parts of the island. The effigy of the petitioner is made with King Fisher Bottle hanging from his neck and drinking from the beer bottle. The 1st respondent, his agents and other agents have the knowledge that the petitioner does not take liquor. By making and exhibiting such effigies of the petitioner with the beer bottle has prejudiced the prospects of the petitioner's election. The election prospects of the petitioner was very much affected by

**Para 11** This is a statement of evidence and not a statement of fact. These averments do not give rise to any cause of action and do not constitute cause of action for the election petition.

**Para 12** Apart from the fact that the caste certificate issued to the 1st respondent was in conformity with the amendment of the Presidential Order, in the absence of any plea by the petitioner that the 1st respondent has no dwelling house ready for occupation in the Island, performance of official acts can be presumed. Moreover, acts done prior to the first respondent becoming a candidate i.e. prior to 27-3-2009 cannot be the subject matter of corrupt practice. (See **Thamarakshan vs. Ramesh Chennithala-1988 (2) KLT (SN) 3**.)

**Para 13** For the reasons already stated no oblique motive can be attributed to the legislative act of bringing forth an amendment to the existing statute. Moreover, the averments relate to a date prior to the filing of the nomination.

**Para 14** Averments in paragraph 14 relates to alleged incidents which took place prior to 27-3-2009 that is the date of nomination and they do not constitute corrupt practice and are beyond the scope of election petition. (*Vide AIR 1994 SC 2277 & AIR 1996 SC 826*).

**Para 15** These averments do not constitute material facts under Section 123(4) of the R. P. Act. There is no allegation that there was publication of any statement of fact. Effigy is not a statement of fact. There is no allegation that there was any publication of any statement of fact which the 1st Respondent either believed to be false or does not believe to be true. There is also no averment that the statement of fact was reasonably calculated to prejudice the prospects of the petitioner's election. Consent of the Agents of the 1st respondent not sufficient. Who are the agents is not mentioned. The factum of consent-is also not mentioned.

publication of the effigy, which was exhibited by the 1st respondent, his agents and workers and followers of his party with consent, knowledge and connivance of the 1st respondent.

As to how and in what manner consent is given is a material fact which has to be pleaded. No cause of action is therefore made out. (Azhar Hussain vs. Rajiv Gandhi : AIR 1986 SC 1253).

18 Ist Respondent, his agents and other persons with the consent and knowledge of the 1st Respondent and his agents exhibited effigy and its photograph picturising the petitioner as not a real Muslim and there is publication of false statement in relation to personal character of the petitioner reasonably calculated to prejudice election prospects of the petitioner.

Para 16

No averment that there is publication of statement of fact which is a necessary ingredient of Section 123 (4) of R. P. Act. Mere statement is not enough. Effigy and its photograph are not statements of facts.

19 The voters of the constituency are Muslims alone. The 1st Respondent and his agents and other persons who have acted for the 1st Respondent in his election agent have appealed to the electorate to vote for the 1st Respondent who is a pious follower of the prophet. The propaganda that the petitioner is not a follower in the spirit and principles of Islam has created and evoked a hatred among the electorate against the petitioner. The appeal on the ground of religion is a corrupt practice under Section 123 (3) of the R. P. Act.

Para 16

Effigy and its photographs would not constitute an appeal on the ground of religion. Since the electorate of Lakshadweep constitute Muslims alone and all the candidates are also Muslims, there is no question of creating hatred among different religious communities and there is no such averment also. [See (1976) 2 SCC 17 and AIR 1986 SC 1113]. Appeal is a request. Since Effigy and its photographs do not constitute an appeal, the ingredient of "appeal on the ground of religion" is not made out. Moreover, there is no allegation that there was any appeal on the ground of his own religion of the 1st Respondent and therefore material facts are not made out to constitute cause of action under Section 123 (3) of the R. P. Act.

20 The 1st Respondent has won the election mainly on account of the appeal made by the petitioner, his agents and other persons with the consent of the 1st Respondent on the ground of religion and use of religious symbol to prejudice the election of the petitioner. A photograph of Sri Late P. M. Syeed father of the 1st Respondent with the background of Mecca Mosque were exhibited on flex boards, published and distributed among the people of Lakshadweep.

Para 17

There is no allegation that there was any appeal on the ground of his own religion of the 1st Respondent. Photograph is not an appeal. Appeal on the ground of religion of the father of the 1st Respondent is not a corrupt practice. The averments therefore lack material facts.

21 The 1st Respondent, his agents and his election workers have with the direction, consent and connivance of the 1st Respondent have committed corrupt practice under Section 123 (3) of the R. P. Act by printing, publishing and distributing Annexure XVIII notice. It is stated therein that Sri P. M. Sayeed is a renowned person, who has performed Haj and Umra every year and the 1st Respondent is following the foot steps of his father. The religious persons who are believing in Allah and Holy Prophet Mustafa should vote for the 1st Respondent. As the petitioner is not the true follower of Allah and Holy Prophet Mustafa, the voters should think in the name of Islam before casting their votes.

Para 18

There is no allegation that there was any appeal on the ground of his own religion of the 1st Respondent. Appeal on the ground of father's religion is not a ground for challenging election. The averments do not disclose any appeal on the ground of religion also as contemplated under Section 123 (3) of R. P. Act. No material facts/cause of action have therefore been made out.

22 There is personal attack on the petitioner that he is not following commandments of Islam, without beard and moustache and does not perform five times prayer in a day. The petitioner is also depicted as a person who has supported the closure of Madrasas and that he is a *drunkard* and *kaffir* and could not be recognized as Muslim. The statement in Annexure XVIII are false and the Ist Respondent, his agents and workers believing the contents of the notice as untrue and it related to the personal character and conduct of the petitioner which was distributed among the voters calculated to prejudice the petitioner's election. All those believing in Allah and Holy Prophet Muhammed Mustafa should vote for the Ist Respondent. As the petitioner is not a true follower of Allah the voters should think in the name of Islam before casting their votes. The voters in Lakshadweep Parliamentary Constituency are Muslims professing Islam.

23 The Ist Respondent, his agents and other persons with the consent of the petitioner and his agents offered gratification by means of payment of cash with the object of inducing the voters to vote in favour of the Ist Respondent and thereby committed corrupt practice under Section 123 (1) (A) of the R. P. Act, 1951.

With the consent of the Ist Respondent and his agents money was distributed through Constables of India Reserve Battalion to voters of different Islands of Lakshadweep Parliamentary Constituency.

24 The officials of the Administration connected with the conduct of the election illegally facilitated the Ist Respondent to have his name enlisted first in the order in the list of contesting candidates and thereby in electronic voting Machine.

#### Para 19

There is no allegation that there was any publication of the alleged statement of fact by the Ist Respondent or any other person with his consent. There is no allegation that the statement of fact is false or that the Ist Respondent either believes it to be false or does not believe it to be true. The allegation regarding closure of Madrasa is not a statement of fact relating to personal character or personal conduct but relating to a political character or political conduct. The allegation that the petitioner is a *Kaffir* (Non-believer) and is a *drunkard* is a statement of opinion and is not a statement regarding any past event to constitute statement of fact as contemplated under Section 123 (4) of the R. P. Act. No cause of action/material facts are therefore made out.

#### Para 20

There is no pleading that Ist Respondent offered gratification to any voter with the intention of inducing the voter to vote for him. There is no averment that any person with the consent of the Ist Respondent or his Election Agent offered any gratification with the intention of inducing any voter to vote for him. There are no averments that those who received payment were voters and that they were paid money either by the Ist respondent or by any person with the consent of the Ist Respondent or his election agent with the intention of inducing those who received money to vote for the Ist Respondent. There is no averment as to who distributed the money through constables of India Reserve Battalion. Distribution of money by itself is not a corrupt practice, without any allegation that it was by way of gratification with the intention of inducing the voters to vote for the Ist respondent. No charge of corrupt practice is made out. Material facts are therefore lacking. The averments are vague and unbelievable also.

#### Paras 23 to 28

Who assisted the Ist Respondent, what is the manner and mode of assistance are all material facts to be alleged and proved. These facts are lacking in the pleading. Cause of action under Section 123 (7) of the R. P. Act is therefore not made out. The enlistment in list of contesting candidate/Electronic Voting Machine is based on the priorities having regard to the nature of the political parties such as National Parties, registered parties etc. Which are the National Parties, which are the registered parties and which are the local parties are not mentioned in the petition and therefore material facts are lacking. Even if the name of RI could only be enlisted as second, the petitioner's name could

- 25 There is non compliance of guidelines of Para 28 Election Commission in the hand book of candidates.

only be enlisted next to RI's name. Moreover how the election of the petitioner is materially affected thereby is also not mentioned.

This is not a ground for challenging the election under Section 100 of R.P. Act. Handbook is not statutory rule or notification under the R.P. Act, 1951.

Since what is wanting in the pleadings are "material facts" and not "full particulars", the decision in **Balwan Singh vs. Lakshmi Narain-AIR 1960 SC 770** cited by Sri M. K. Damodaran is of no avail to the petitioner.

After an anxious consideration of the pleadings and the allegations in the election petition, I have no hesitation to conclude that the Election Petition does not make out the ingredients of the ground put forward that the first respondent was not qualified to be a candidate. The election petition also does not make out the ingredients of any of the corrupt practices falling under Section 123 of the R.P. Act. Since there is no complete cause of action or material facts in support of the election petition so as to enable this Court to proceed to the trial of the Election Petition, this Election Petition is dismissed/rejected as not maintainable.

Dated this the 17th day of May, 2010.

Sd/-

V. RAM KUMAR, (Judge)

#### APPENDIX E.P. NO. 5 OF 2009

#### PETITIONER'S EXHIBITS:

Annexure-I	True Copy of the Gazette Notification regarding the amendment brought to the Constitution (Schedule Tribes) (Union Territories) Order (Amendment) Act, 2008 Published in the Lakshadweep Gazette, Dated 31-1-2009.
Annexure-II	True Copy of the Order No. 7/1/1998-80/ADM (Vol. II) Dated 3-2-2009 issued by the Administration of the Union Territory of Lakshadweep, Kavarathi.
Annexure-III	True Copy of the certificate of Birth of the 1st Respondent Issued by the Government of Karnataka Dated 18-1-1996.
Annexure-IV	True Copy of the Caste Certificate issued in respect of the 1st Respondent No. 15/3/2008 SDO(AND)416 Dated 3-2-2009.
Annexure-V	True Copy of the report appeared in the Mail Today Dated 26-12-2008.
Annexure-VI	True Copy of the photograph showing the Hon'ble Minister displaying the Certificate in the background of the projection of the photograph of Late P. M. Sayeed.
Annexure-VII	True Copy of the Office Order No. 2/4/2007 Services issued by the Director (Services) Administration of Lakshadweep Dated 1-2-2009.
Annexure-VIII	True Copy of the Schedule showing the Names and Address of the Officials who attended the meeting of the Lakshadweep Parishath Congress and the Persons who witnessed the same.
Annexure-IX	True Copy of the Letter given by the President N.C.P. Lakshadweep State Unit to the Hon'ble Minister of Home Affairs, New Delhi Dated 9-2-2009.
Annexure-X	True Copy of the Schedule showing the Name and Address of the Government Officials who have conspired for Canvassing Votes for the First Respondent.
Annexure-XI	True Copy of the Letter addressed by the General Secretary of the NCP to the Electoral Officer Dated 10-2-2009.
Annexure-XII	True Copy of the Lakshadweep Times Dated 13-2-2009 Reporting the News regarding the function organised by the Lakshadweep Employees Parishath.
Annexure-XIII	Photograph of the Effigy of the Petitioner Exhibited at Agatti.
Annexure-XIV	True Copy of the Petition Deed 5-4-2009 submitted by Sri Aboobacker Kondinoda before the Police Officials.

<b>Annexure-XIV(A)</b>	True Copy of the English Translation of Annexure XIV.
<b>Annexure-XV</b>	Schedule showing the Places where the Effigy of the Petitioner was exhibited in the Island and the Name and Addresses of the Persons Displayed the same and who have witnessed the same.
<b>Annexure-XVI</b>	Copy of the Photograph of Sri Late P.M. Sayeed the Father of the Ist Respondent with the background of the Mosque in MECCA.
<b>Annexure-XVII</b>	True Copy of the Schedule showing the Place, Date and Time of Exhibiting and Distribution of Copies of Annexure XVI.
<b>Annexure-XVIII</b>	True copy of the anonymous notice published at the instance of the Ist Respondent.
<b>Annexure-XVIII(A)</b>	True English Translation of Annexure XVIII.
<b>Annexure-XIX</b>	True Copy of the schedule showing the Place, Date and Time of the Distribution of Annexure XVIII and Name and Address of the Persons Distributed and Witnessed.
<b>Annexure-XX</b>	The Copy of the Complaint given by K.P. Ali on 16-4-2009 to the Chief Electoral Officer.
<b>Annexure-XXI</b>	Copy of the Photograph showing the Payment of Money by a Constable Muhammed Ubaidulla outside the house owned by Muthukoya Haji to a Voter.
<b>Annexure-XXI(a)</b>	True Copy of the CD showing the Transactions on Payment of Money to the Voters.
<b>Annexure-XXII</b>	True Copy of the letter given to the Chief Electoral Officer by T.P. Abdul Razack Unit Secretary of the NCP Kavarathi Dated 21-3-2009.
<b>Annexure-XXIII</b>	True Copy of the letter given by T. P. Abdul Razack to the Chief Electoral Officer Kavarathi dated 23-3-2009.
<b>Annexure-XXIV</b>	True Copy of the letter given by T.P. Abdul Razack to the Chief Electoral Officer, Kavarathi dated 25-3-2009.
<b>Annexure-XXV</b>	True Copy of the Communication No. 16/41/2009-ELC Dated 10-4-2009 of the Electoral Registration Officer to the SHO Kavarathi.
<b>Annexure-XXVI</b>	True Copy of the List of Nominations Dated 27-3-2009 Published by the Returning Officer.
<b>Annexure-XXVII</b>	True Copy of the List of Contesting Candidates Dated 2-4-2009 published by the Returning Officer.

[F.No. 82/LKD-HP/(5/2009)/2010]

By Order,

R. K. SRIVASTAVA, Secy.